

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

MEETING OF THE  
UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona  
June 25, 2008  
9:00 a.m.

Location: 1110 W. Washington  
Room 250  
Phoenix, Arizona

REPORTED BY:  
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1	INDEX FOR THE AGENDA ITEMS	
2	AGENDA ITEMS:	PAGE
3	1. CALL TO ORDER AND ROLL CALL	4
4	2. APPROVAL OF MINUTES FROM APRIL 23, 2008 MEETING	5
5	3. ADEQ UPDATES	5
6	4. DISCUSSION OF RECENT LEGISLATION AND RULES AFFECTING THE UST PROGRAM	
7	A. ARIZONA HOUSE BILL 2425	16
	B. MNA/NFA RULES IMPLEMENTATION	18
8	C. OTHER	28
	5. DISCUSSION AND APPROVAL OF THE SAF 2008 COST SCHEDULE	33
9	6. EVALUATION SUBCOMMITTEE UPDATE	56
10	7. TECHNICAL SUBCOMMITTEE UPDATE	58
11	8. GENERAL CALL TO THE PUBLIC	58
12	9. SUMMARY OF MEETING ACTION ITEMS	58
13	10. DISCUSSION OF AGENDA ITEMS AND SCHEDULE FOR NEXT COMMISSION MEETING	59
14	11. ANNOUNCEMENTS:	
15	A. NEXT POLICY COMMISSION MEETING IS SCHEDULED TO BE HELD ON JULY 23, 2008, AT 9:00 A.M.	59
16	IN ROOM 250 AT ADEQ LOCATED AT 1110 W. WASHINGTON, PHOENIX, ARIZONA	
17	12. ADJOURN	60
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1 COMMITTEE MEMBERS PRESENT:

2

3 Gail Clement, Chair

4 Philip McNeely

5 William (Bill) Bunch

6 Theresa Kalaghan

7 Jon Findley

8 Tamara Huddleston, Esq.

9 Karen Gaylord, Esq.

10 Manoj Vyes

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1 PROCEEDINGS

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3 CHAIRPERSON CLEMENT: Good morning all. This is  
4 the June 25th, 2008 UST Policy Commission. Welcome. Glad  
5 to see that we have people interested today and attending.  
6 It's good to see everybody.

7 Now with a roll call, if we could start with  
8 Tamara.

9 MS. HUDDLESTON: Tamara Huddleston.

10 MR. VYES: Manoj Vyes.

11 MR. MC NEELY: Philip McNeely.

12 CHAIRPERSON CLEMENT: Gail Clement.

13 MS. KALAGHAN: Theresa Kalaghan.

14 MS. GAYLORD: Karen Gaylord.

15 MR. BUNCH: Bill Bunch.

16 MR. FINDLEY: Jon Findley.

17 CHAIRPERSON CLEMENT: Did everybody receive the  
18 April 23rd, 2008 UST Policy Commission meeting minutes?

19 Did you have a chance to review those minutes?

20 Are there any questions or issues regarding the  
21 minutes?

22 Is there a motion to approve the April 23rd, 2008  
23 UST Policy Commission meeting minutes?

24 MR. VYES: I move that we approve the April  
25 minutes.

1 MR. BUNCH: I'll second.

2 CHAIRPERSON CLEMENT: And then there's a second  
3 from Mr. Bunch.

4 All in favor of approving the April 23rd, 2008  
5 meeting minutes?

6 (Chorus of ayes.)

7 CHAIRPERSON CLEMENT: Anyone opposed?

8 No? Okay. The April 23rd, 2008 UST Policy  
9 Commission meeting minutes have been approved.

10 And then we'll move to the next agenda item,  
11 which are the ADEQ updates. There were materials that  
12 were distributed by e-mail, and then there was also a  
13 packet and the information is on the table back there.

14 MR. MC NEELY: On ADEQ updates, I'll start with  
15 the Corrective Action Section statistics, and that's the  
16 table that has LUST statistics, correction action  
17 documents pending, MTCP program.

18 Just across the top, as you see, in May and April  
19 we only opened one new LUST in two months, which is good,  
20 and then we closed 42. So we're still closing quite a bit  
21 more than we're opening.

22 We closed 86 percent total, and we have 1,219 as  
23 of the end of May. And not all of those are SAF eligible.  
24 There are about a hundred of those that are not SAF  
25 eligible. And we have about 1100 releases that are SAF

1 eligible. Remember federal tanks and state tanks, plus  
2 the new releases reported after June 30th, 2006, that was  
3 about 50 something releases since then.

4           So, the second column down.

5           CHAIRPERSON CLEMENT: Could you hold one second?

6           MR. MC NEELY: Yes.

7           CHAIRPERSON CLEMENT: My package was missing  
8 this, and I printed it out from the e-mail this morning.  
9 Did everybody get this document? It wasn't in our  
10 packages, so let's just see if there are some in the back  
11 here.

12           Could we get a few extras made because I don't  
13 think everybody --

14           MR. JOHNSON: I will go ahead and make some.

15           CHAIRPERSON CLEMENT: Okay.

16           MR. MC NEELY: I'll talk about the SAF, then.

17           CHAIRPERSON CLEMENT: Okay. That would be great.  
18 Thank you. Sorry about that.

19           MR. MC NEELY: That's all right.

20           The SAF is the colored bar graph, and this has  
21 been the trend. We process pretty much equal or more than  
22 what we get in usually.

23           In April we received 54 applications and we  
24 processed 57. That's the blue.

25           In May we had 64 submitted and we processed 61.

1                   So, if you go down to the table on the bottom, we  
2 have total in-house 123 claims, which is not -- it's been  
3 steady for the last few months, so I think we're pretty  
4 steady now at a hundred and some claims, which is good  
5 because we process about 60 a month, and our time line is  
6 to try to get them out within 90 days, so we're hitting  
7 pretty close to what we're supposed to be doing. 123  
8 claims, it's usually much higher than that.

9                   So you can see the breakdown of the claims. We  
10 have 77 in reimbursement, 36 direct pay, which is being  
11 paid off of preapproval work plans, and 10 preapproval  
12 workplans. So most parties out there are doing work under  
13 reimbursement, not preapproval workplans.

14                  If you want to go to the next page, which is the  
15 appeals. Informal appeals, we had 32 requests in May and  
16 we processed 36 in May. And formal appeals, we had 6  
17 requests in May and we processed 54.

18                  CHAIRPERSON CLEMENT: Oh, good. Can I ask a few  
19 questions here?

20                  MR. MC NEELY: Yes.

21                  CHAIRPERSON CLEMENT: It looks like the informal  
22 appeals went up fairly dramatically or are going up. Is  
23 that a fair statement or not?

24                  MR. MC NEELY: I don't think it's -- I think you  
25 have to look at the whole trend. Sometimes it goes up;

1 sometimes it goes back down.

2 CHAIRPERSON CLEMENT: Was there anything  
3 happening in May that was of particular significance?

4 MR. MC NEELY: I don't remember. I actually look  
5 at all the informal appeals now, just little things. This  
6 doesn't say dollar amount, doesn't say what the informal  
7 appeal -- they can appeal anything, any dollar amount. It  
8 can be \$100, \$200.

9 So the way we process, though, when we do an  
10 interview determination, we pay what we can up front, then  
11 we do an informal appeal and then we will pay again after  
12 that, so it's not like they are waiting for what we  
13 approve. A lot of times we are just waiting for  
14 documentation. We will schedule you a meeting, and so  
15 this is just part of the process. Rather than holding the  
16 whole application up, make a determination, then they  
17 appeal it.

18 And the formal appeal is 54, I think that was a  
19 bulk. We had a whole bunch of appeals that were  
20 consolidated together, so it's not like we had 54  
21 individual -- well, we actually had them, but they were  
22 consolidated, one client, or one client but one  
23 owner/operator.

24 CHAIRPERSON CLEMENT: That makes sense. That  
25 must have felt good to get 54 out the door.



1 MR. MC NEELY: Yes. The AGs appreciate that.

2 Then the last thing, it's more a breakdown of  
3 where they are in the process. Remember our process is,  
4 we did administrative review, technical review, then we  
5 process up for payment. And we don't cut the checks.  
6 Once we do a final determination, we send the actual  
7 paperwork over to the GOA, and they produce the check, and  
8 sometimes it takes 15 days, sometimes it takes 20 days.

9 And if there are some complaints about not  
10 getting the check quickly enough, we do have electronic  
11 payment. If the applicant wants electronic payment, they  
12 just have to give us the information and we will actually  
13 wire them our final determination. It's very quick. But  
14 some parties don't want to give us that information, so  
15 you have to do a hard check and it takes 15 to 20 days.  
16 It's out of our control.

17 Any questions on the SAF?

18 CHAIRPERSON CLEMENT: Just a quick one. So when  
19 you make the final determination, is that the Department  
20 of Administration that has to issue checks?

21 MR. MC NEELY: It's part of that, but it's the  
22 sub.

23 CHAIRPERSON CLEMENT: A sub part of them?

24 MR. MC NEELY: Yeah. GAO. I can't think what  
25 that stands for, Joe? Governor's Accounting Office?

1 Right. They are the ones that control the money.

2 CHAIRPERSON CLEMENT: But do you have to go  
3 through GAO when you do the electronic transfer?

4 MR. MC NEELY: I think it goes to them because  
5 they control the money, but it's immediate.

6 CHAIRPERSON CLEMENT: It is just real quick.

7 MR. MC NEELY: I believe you'll get the money  
8 transferred at the same time you would be getting the  
9 final determination, and some companies do that and  
10 there's been no complaints. They get the money. And  
11 other ones, they want to guard their private information  
12 so it takes longer, but if they want to have a quicker  
13 payment, that's what they can do.

14 CHAIRPERSON CLEMENT: And then just looking at  
15 the way this spreadsheet is laid out, when it says less  
16 than 90 days, is that a summary, in other words, is it  
17 less than -- is the 48 under reimbursement, that's just  
18 the administrative review is less than 90 days or the  
19 whole process is still less than 90 days?

20 MR. MC NEELY: The whole process. But remember,  
21 this is reported as of May 30th, so on June 1st some of  
22 those may be over 90 days. On June 2nd, but we're not  
23 reporting. We're reporting May 30th. We look at every  
24 application we have on May 30th, are there any over  
25 90 days or not. If they're not, that's what we do. And

1 typically if you track it by day, which is a lot more  
2 complicated, 97 percent of ours go out within 90 days, if  
3 you track it by day. But it's not that easy to actually  
4 track it. We send AM letters out, we serve notice  
5 letters, that stops the clock by rule for waiting for them  
6 to sign a certification or give us an invoice, it stops  
7 the clock. So, it's not just when I sent the application  
8 in, it's 90 days. It gets complicated when you are  
9 dealing with hundreds of applications. It's a moving  
10 window.

11 CHAIRPERSON CLEMENT: Thank you.

12 MR. MC NEELY: Okay.

13 CHAIRPERSON CLEMENT: Any questions regarding the  
14 SAF numbers?

15 MR. MC NEELY: I gave my only copy to you.

16 Back to the LUST statistics. We talked about  
17 closures, and our closures have really gone down  
18 significantly -- not our closures, but our opening new  
19 LUST numbers. And we have been doing a lot more  
20 inspections and we're looking for them now, so there is  
21 two thoughts. You can think that maybe the upgrades and  
22 the new more frequent inspections are helping, that there  
23 aren't releases, or you can say maybe people aren't  
24 reporting releases because they don't really want to spend  
25 the money to clean it up without the SAF there. But I

1 think typically all the new releases that we've seen when  
2 we go out and drill, a lot of them are being characterized  
3 very quickly. I think that we're catching them earlier  
4 and we're not having these releases to groundwater. Most  
5 of the releases are soil only releases. They put a couple  
6 of borings in and close it. So a lot of releases we've  
7 had since June 30 of 2006 have already been closed.

8               CHAIRPERSON CLEMENT: That's great.

9               MR. MC NEELY: And I haven't heard any complaints  
10 about not getting insurance or not being paid by  
11 insurance. I mean, no one's complained directly to us.  
12 I've heard it through the grapevine, you know, but I  
13 never -- when you look into it, I haven't had anyone  
14 really say they are not being paid, so we'll see how that  
15 pans out. If anybody knows about any information, I'd  
16 like to know, but so far things seem to be doing pretty  
17 well.

18           CHAIRPERSON CLEMENT: Yes, please, in the  
19 audience, if you know of information regarding, as we  
20 phase out the SAF, problems for payments, insurance costs,  
21 insurance coverage, please let someone on the Commission  
22 or Mr. McNeely know directly so we can research that  
23 because that is a potential big issue as we phase out the  
24 SAF.

25           MR. MC NEELY: Well, the Corrective Action

1 documents, that's just a status shot of where we are with  
2 documents in-house. We have 25 total pending, 4 SCRs.  
3 Just 2 CAP mods, 1 CAP, 10 closure requests, 6 workplans,  
4 1 risk assessment.

5 CHAIRPERSON CLEMENT: Where are you with that  
6 risk assessment?

7 MR. MC NEELY: Which one is that? Do you know  
8 that?

9 CHAIRPERSON CLEMENT: I know which one that  
10 people tell me that hasn't been ever reviewed.

11 MR. MC NEELY: And I need to get that, then,  
12 because I'm not sure which one that is.

13 CHAIRPERSON CLEMENT: I have heard, and I don't  
14 know if this is factually correct, but I've heard that  
15 it's the Honeywell site, that that risk assessment is  
16 still outstanding. And is that correct?

17 MR. MC NEELY: I have no idea what you're talking  
18 about. There is no risk assessment.

19 CHAIRPERSON CLEMENT: We'll have to talk.

20 MR. MC NEELY: They are about to start up their  
21 system.

22 CHAIRPERSON CLEMENT: Well, that's what -- we'll  
23 talk.

24 MR. MC NEELY: Okay.

25 CHAIRPERSON CLEMENT: But I would like to know in

1 the future regarding the risk assessment, because if  
2 that's the same one lingering, and it's been like a lot of  
3 days, I'd like to know about it.

4 MR. MC NEELY: If they send me an e-mail directly  
5 to me, I will look into it, but I really don't have a  
6 backlog of risk assessments as far as I know. It's not  
7 Honeywell. I'm all over Honeywell.

8 Okay. The last thing is Municipal Tank Closure  
9 Program, and that's just an update. We removed 158 tanks  
10 to date, and we are still pushing it. We are still  
11 looking for more. We have a full-time person that's  
12 looking for abandoned tanks, not just for this program,  
13 just to get them into the system, make sure that we just  
14 don't have a bunch of tanks out there. Once the SAF goes  
15 away, we don't want to find another thousand tanks, so  
16 we're trying to do everything we can to find the public  
17 universe in Arizona, what is the universe of UST problems,  
18 so we're working on that still.

19 CHAIRPERSON CLEMENT: How are you doing that with  
20 the universal of abandoned tanks? Because often, unless  
21 somebody disturbs the ground or develops a parcel, you  
22 wouldn't have any reason to go looking, would you?

23 MR. MC NEELY: That may be the case, but a lot of  
24 cases are, you have these things that look like USTs with  
25 a canopy and they are not in our system. They might have

1 been closed in 1960 or 1970. No one reported it, and  
2 unless you go by and look at it, and our inspectors are  
3 good at that. When they drive by, they pull over and look  
4 and they'll say, is this in our system, and we just sent  
5 out between Flagstaff and Kingman, we went through Route  
6 66, which people don't do anymore because they go I-40,  
7 and we found quite a few, and we look at the system. We  
8 contacted property owners. And in some cases we go out  
9 there with a little magnetic detector, is there really a  
10 tank here or not. So it takes a lot of leg work. But  
11 they are out there. You can actually find them.

12               CHAIRPERSON CLEMENT: And you are focusing on the  
13 Route 66 area because that's the big initiative you want  
14 to get that all taken care of?

15               MR. MC NEELY: I would like to focus on  
16 everything, but Route 66 had all the abandoned USTs, but I  
17 think there are other places that we're really trying to  
18 push too. I think now in rural Arizona there are  
19 abandoned tanks out there.

20               We have legislative liaisons in all four corners,  
21 in Yuma. I forgot the other place, but there's one in the  
22 southeast corner of Arizona, and when they go around, they  
23 look and they will call it and say, is this tank in our  
24 system, so we're actually looking.

25               MR. FINDLEY: Are these agricultural as well as

1 commercial?

2 MR. MC NEELY: No. If we find agricultural, I  
3 mean, we would say it's not in our jurisdiction, but  
4 usually it's gas stations. Every once in awhile we will  
5 get a tank that's not in our jurisdiction. We don't do  
6 nothing, but we will forward it over to waste program,  
7 even though they have no authority to enforce anything.

8 CHAIRPERSON CLEMENT: Good. Thank you.

9 MR. MC NEELY: I guess that's it for the ADEQ  
10 updates.

11 You want me to go into the recent legislation  
12 rules?

13 CHAIRPERSON CLEMENT: Any other questions or  
14 comments on the updates?

15 Let's move to the Arizona legislation for  
16 enforcement of Arizona House Bill 2425.

17 MR. MC NEELY: I sent you the final copy on a  
18 PDF?

19 CHAIRPERSON CLEMENT: Yes.

20 MR. MC NEELY: That was filed with the Secretary  
21 of State on May 20th, and I believe it goes into effect  
22 120 days after session.

23 MS. HUDDLESTON: 90 days.

24 MR. MC NEELY: 90 days after session. I think  
25 the session is never going to end, so it may never go into



1 effect.

2               So let's assume it ends on July 1st, or so, this  
3 would be October 1st, but it doesn't really matter because  
4 the first deadline in here is January 1st, 2009, and  
5 that's for the red tag authority or the stop use tag is  
6 what we call it, and the secondary containment.

7               So what we need to do between now and January 1st  
8 is a couple of things. We need to do outreach for one,  
9 let everyone know this is coming. Two, we need to develop  
10 what the actual stop use tag looks like, and actually  
11 produce some of them so we actually have stop use tags,  
12 and then actually outreach needs to include all the  
13 deliverers, the people that actually deliver fuel, because  
14 they need to know that this is coming, and what a stop use  
15 tag actually is. That's the group that we haven't really  
16 talked to yet. And we're trying to get a list of all of  
17 the people that would deliver in the state. But I've been  
18 told it's like a hundred and something, but we're going  
19 through ADOT to try to get those to date. They should  
20 have a list for that. So, I mean, that's where we're at,  
21 so we don't think we need to implement any rules between  
22 now and then to do those two things.

23               House Bill 2425 also gives us the authority to do  
24 training. That goes into effect August 1st, 2012,  
25 everyone has to be trained, so we have time to figure out

1 what we need to put in rules to get the training  
2 requirements out. So in the meantime we're really going  
3 to focus on the design of the stop use tag, how to  
4 implement that. The deal we had, we are supposed to put  
5 on our web site when we actually put a stop use tag out  
6 there so the deliverers will know. Get a design what we  
7 will put in that web page, how it will look, and let  
8 people know where to go to look that information up.  
9 There is some outreach to do.

10 CHAIRPERSON CLEMENT: That was the key  
11 difference, I think, between what the UST Policy  
12 Commission saw and approved and what the final legislative  
13 change was was that notice provision and how that was  
14 going to be managed by the agency.

15 MR. MC NEELY: That's correct. And it was a time  
16 frame, say within five days we'd pull the red tag off  
17 within five days. So, the first change we made was as  
18 soon as practicable, but they wanted actually a hard  
19 deadline.

20 So, any questions about this? I know Mr. Bunch  
21 is probably going to talk about this.

22 CHAIRPERSON CLEMENT: Okay. Thank you.

23 MR. MC NEELY: The MNA Rule implementation, that  
24 went into effect in February of this year, so we have  
25 authority now to -- we call it the MNA Rule, but really

1 what we're doing right now is using the 26304 authority,  
2 which is closing sites which exceed water quality  
3 standards. That applies to SAF eligible sites and non-SAF  
4 sites.

5           The MNA rule, actually the program doesn't really  
6 go into effect June 2011, when the SAF is sunsetted and  
7 all the claims are paid off, that's when MNA fund goes  
8 into effect where we are actually doing monitoring under  
9 the MNA program.

10           But there are a couple of issues. One is there  
11 are requirements that have to be met to be eligible for  
12 the MNA program, and one of those main ones are to get  
13 your site, the source cleaned up. That's the main thing.  
14 So then you have to have -- make sure the plume is  
15 actually attenuating, attenuation is occurring. You have  
16 to document all that stuff. So once you do that, there is  
17 some administrative conflicts that you have to go through.

18           One is you have to have a CAP that's approved  
19 that says that you are going to use MNA to clean up the  
20 site. So everyone has to get a CAP in before the  
21 deadline. And then for volunteers, they have to get a CAP  
22 plus a preapproval workplan in because preapproval  
23 workplans, they can't spend money if they spend over  
24 \$100,000 in facilities. So if they are going to do the  
25 MNA program, they have to have a preapproval workplan in

1 by June 30th, 2009, which is the deadline for the sunset,  
2 which means they have to have an MNA cap in before that.  
3           So the deadline we're talking about, if you are a  
4 volunteer, February time frame is probably when they have  
5 to have a MNA cap, about six, seven months from now, but  
6 volunteers, they are not liable, so in reality, they can  
7 just put it in the State Lead and we will do it anyway, so  
8 those deadlines are sort of misleading. It's not like the  
9 site will sit. We'll take it if it's an orphan site.  
10 Volunteers are doing the work, we will do the work.

11           But now for the owner/operators, their deadline  
12 is, they have to have a CAP approved and application  
13 submitted by June 30th, 2010, so even with that time  
14 frame, you still have to get a CAP in probably by the end  
15 of January 10, 2010 time frame, that's the latest I would  
16 say.

17           CHAIRPERSON CLEMENT: So you'd need a six-month  
18 window for the CAP approval process, so the first draft  
19 people should budget that time.

20           MR. MC NEELY: Yeah. And it's not -- that's what  
21 we wanted to actually recommend that we have a Technical  
22 Subcommittee meeting and talk about this with Terry and  
23 talk about the time frames. We are all trying to come up  
24 with the extreme on CAP, so you don't need to pull a low  
25 CAP if you've already done all the cleanup, and

1 everything. We are just going to show that MNA is working  
2 and talk about the time frames. It's not six months to  
3 review the CAP, but what you've got to do is once we  
4 approve the CAP, then we have to receive an application  
5 and they have to abandon their wells, abandon equipment,  
6 do SAF application, get their application in by June 30th,  
7 2010. So, there is a lot of work to be done after we  
8 approve the CAP. We're assuming the CAPs won't be that --  
9 the time frame won't be that long to approve. But by  
10 statute, we're supposed to do it within 90 days, 120 days.

11 CHAIRPERSON CLEMENT: When would the next  
12 Technical Subcommittee meeting be scheduled? You want to  
13 try to do that?

14 MS. KALAGHAN: I think we should.

15 CHAIRPERSON CLEMENT: Is this is a good time to  
16 talk about this while we're in the midst here?

17 MR. MC NEELY: Yeah. I think we should do it in  
18 July sometime, whenever you and Cathy are available.

19 CHAIRPERSON CLEMENT: We could set a date and  
20 time that the audience here would have an opportunity to  
21 know when that's going to be.

22 MR. MC NEELY: We usually have a standing room.  
23 I think you guys changed the time from 9 to 10 o'clock.

24 MS. KALAGHAN: Right, to help people get there.

25 CHAIRPERSON CLEMENT: So that would be -- it's

1 the first or the second week in July?

2 MR. MC NEELY: It's the third Wednesday.

3 MR. JOHNSON: I thought it was the third

4 Thursday. I'm not positive.

5 CHAIRPERSON CLEMENT: The third Thursday? That

6 would be the 24th of July. Does that work at all?

7 MS. KALAGHAN: Yes, it does for me.

8 CHAIRPERSON CLEMENT: And that would start at

9 10 a.m., and this would be regarding the MNA process, time

10 frames and the Monitored Natural Attenuation program.

11 So, tentatively July 21st, 2008, 10 a.m., a

12 Technical Subcommittee meeting. 24th. 24th.

13 We're all going to come in on Saturday. I'm

14 sure.

15 Any questions or comments regarding that?

16 MR. KELLY: Do you have a date?

17 CHAIRPERSON CLEMENT: July 24th, 2008, 10 a.m.,

18 ADEQ, room to be provided. I think I have it right now.

19 MR. MC NEELY: Going on with the MNA/NFA rules,

20 the actual closure portion where we can actually close

21 sites without exceeding water quality, in the packet we

22 sent out, this example, not actually an example, but an

23 actual letter that we sent, this is a Circle K -- no, it's

24 a Unocal, this is just what we're sending out. This is

25 showing that -- the first letter we sent out is

1 eligibility for closure. And that's just saying, hey,  
2 you're eligible, and we have appeal rights. Then we also  
3 send it to the water provider, the city, the property  
4 owner, and DWR, and if there is any other parties that are  
5 like next door. It's a WQARF site, but there is  
6 remediation going on. So we send it to all those parties,  
7 and we give the public notice. We put it in, this is the  
8 file, this is the maximum concentration we have. In this  
9 case they have one well, and it's 14. It used to be 140.  
10 They've done active cleanup. It's down to 14 now, and  
11 located on the site.

12               We've done this six times already, sent out six  
13 of these across the state, Tucson, Coolidge, Phoenix, up  
14 north, I can't remember which site, where that was, but we  
15 sent it to six different places. We had one comment from  
16 a water provider and we actually met with them and with  
17 their attorney and talked them about it. And the  
18 situation in that case was the water provider had a well a  
19 half mile away, screened at 1100 feet, and this site went  
20 off. He had a downgraded well of 107 feet off, never been  
21 contaminated in the whole history. They had done active  
22 remediation. They had just one well on site that was  
23 contaminated, but they weren't technical. I want to  
24 protect my water, but once we sat down with their  
25 attorneys, they understood that their water was protected.

1       So, I feel like the process is working. So then  
2 the next step, though, they still have an another bite at  
3 the apple, because then we send out a formal, a final  
4 determination saying, okay, we're closing your site, and  
5 they still have formal appeal rights because they are the  
6 effected party if they want to appeal it. We are hoping  
7 we don't have to do that. Hopefully it's pretty  
8 straightforward.

9               So, we've done that with six of them. We haven't  
10 sent out the final determinations yet. We're about to.  
11 And we have another whole group of them that we're trying  
12 to do, and we have like five more to send out probably  
13 this week and we're going to keep going in these little  
14 batches and see how it goes.

15               CHAIRPERSON CLEMENT: How many of these do you  
16 think you will have?

17               MR. MC NEELY: I think we probably have -- right  
18 now I'm looking at about 50, about 50. I think there is  
19 more coming. The good news is, almost everyone we look  
20 at, it's an active remediation. They knock the  
21 concentration down to like 10,000 down to like 20, 30, 50,  
22 one well, two wells. We had a huge plume. So it's really  
23 it's pretty impressive when you look at the progress.

24               CHAIRPERSON CLEMENT: And refresh my mind. Are  
25 these people coming into the agency or is the agency doing



1 an independent review to determine that these sites are  
2 eligible, and then they're going to owner/operator?

3 MR. MC NEELY: Both ways.

4 CHAIRPERSON CLEMENT: Both ways.

5 MR. MC NEELY: We'd prefer if they'd come to the  
6 agency itself, because it's nice to have a report that  
7 says my plume is shrinking, MNA is occurring, and I'm  
8 requesting it, and that's what a lot of what we've done.

9 And the other side, we're just reviewing files.

10 And if you have one well. A lot of times a lot of  
11 activity hasn't been happening lately. A lot of times the  
12 activity is not happening because they've done  
13 remediation. It's like clean up. Oh, never mind, okay,  
14 you don't need to waste any more money sampling, go ahead  
15 and close this site.

16 And the way I want to work it, you actually call  
17 the person up and say, hey, we are considering this for  
18 closure. That way they don't get surprised like what's  
19 this.

20 CHAIRPERSON CLEMENT: Do you do any of  
21 assessment? One of things I've seen in the chlorinated  
22 plume sites, as water levels have dropped, water quality  
23 concentrations have reduced considerably over many, many  
24 wells that I've seen, but there still is, in some of the  
25 cases, no active remediation, and clearly, and clearly

1 it's just -- it appears to be a function of a water level  
2 not actually encountering the contaminated sediments. Do  
3 you do any assessment in this program regarding the  
4 implications of a water level change?

5           MR. MC NEELY: Yes, we do. We actually look at  
6 the hydrographs and the concentrations, and the best case  
7 scenario would be when you have high concentrations at a  
8 certain level, as the water table drops and goes down. It  
9 seems like it cycles over the years, and we look at it in  
10 the cycles, if it's less and it goes back up. Some of  
11 them, especially in west Phoenix, so we see concentrations  
12 go down in the summer when they pump, it goes up, and it  
13 look when it goes back up and there is still a trend that  
14 it's going down.

15           And sometimes in the cases where it drops  
16 significantly and it never goes back up, they do  
17 remediation and do confirmation, so we do check on that.  
18 In most cases people do SBE when the water is low, and  
19 that's the best way to clean it up, and then confirmation,  
20 we're pretty confident if the water comes back up, we're  
21 okay.

22           CHAIRPERSON CLEMENT: I mean, that's all I can  
23 do. When you quote on these, the concentrations, you've  
24 got a date on that so people will have a sense of what  
25 time of the year that is and where the water levels are.

1 Okay. That's fine.

2 MR. MC NEELY: Yeah.

3 CHAIRPERSON CLEMENT: What's the shortest period  
4 of time that you've had groundwater monitoring and going  
5 to closure on your sites, do you know?

6 MR. MC NEELY: No, but most of them have been  
7 around for close to a decade. We save the time when  
8 they're assessed. Yeah. I mean, most of these  
9 groundwater sites, especially if they've have active  
10 remediation, they've been around a long time.

11 CHAIRPERSON CLEMENT: Do you have a minimum  
12 period of time that you're going to require monitoring  
13 before they can go to closure?

14 MR. MC NEELY: I don't know. You know, in the  
15 past, once you got below water quality standards, but now  
16 we just look at trend, if you have ten years of a trend --

17 CHAIRPERSON CLEMENT: You should know what you  
18 are doing.

19 MR. MC NEELY: -- you should know. And if you  
20 look at the water rise and fall.

21 CHAIRPERSON CLEMENT: It seems like the program  
22 is being well implemented and well thought out. It's  
23 going to be very interesting to watch this.

24 MR. MC NEELY: And a lot of these that we need to  
25 close between now and 2010 are probably going to be in

1 this category or the MNA, because we're not going to get  
2 everything below water quality standards, so I think  
3 that's -- most of our sites out of the 1100 that are SAF  
4 eligible, I think there is like about 800 that are  
5 groundwater. And the soil ones, we're still pushing.  
6 We do have a lot of soil sites out there that are  
7 still -- we can't close them unless a risk assessment is  
8 done or a remediation is done, one of the two. A lot of  
9 times we are trying to get people to go back and  
10 confirmation. The data we have is old, but it may be  
11 clean by now. Let's go back, so that's hard to get  
12 parties to move forward.

13 CHAIRPERSON CLEMENT: It's going to be in their  
14 best interest to get it done while there is still money  
15 available.

16 MR. MC NEELY: Item C, other. Budget sweeps.  
17 The legislature did sweep 28.4 million from the SAF Fund.  
18 I think they did that in April or May. So -- but our  
19 current balance is, as of May 31st, we still had  
20 \$27 million in the account, and that did not include the  
21 revenue from May, so we always get about \$3 million, so  
22 we're still hitting about 30 million, 31 million.

23 CHAIRPERSON CLEMENT: Your cash flow is going to  
24 be acceptable in terms of what your claims processes are  
25 and all that?

1                   MR. MC NEELY: Right now it is, and we do bring  
2 in about 30 to 33 million a year, and even though it is  
3 going down because of the higher gas prices, but I guess  
4 we're not hurting that bad because people keep spending  
5 that money, the gallons, it keeps coming in. I keep  
6 looking at the monthly -- it keeps coming in, so we are  
7 still getting our 30 million, 33 million a year, right.  
8 So looking at that, unless we have a huge year, we're  
9 sitting fine.

10                  But, 2009 is coming and they're trying to balance  
11 that budget, too, and I've heard that the legislature has  
12 come up with 12 million additional sweeps for this year,  
13 or this year coming up, which would -- we're still okay,  
14 our cash flow is okay, so that may be coming.

15                  MS. KALAGHAN: 12 million out of your SAF?

16                  MR. MC NEELY: SAF. So right now we have about  
17 28 million. That will get us down to 16 million, but  
18 remember, we get 30 million a year, and as long as we have  
19 enough to pay the claims, that's my major issue. I don't  
20 want to have to go into ranking and let people wait.

21                  CHAIRPERSON CLEMENT: You don't want to delay the  
22 claims. You want the cash flow to be able to meet the  
23 claims.

24                  MR. MC NEELY: We're pushing to get closed.

25                  CHAIRPERSON CLEMENT: So there may be a rub

1 there?

2 MR. MC NEELY: I think we're okay.

3 CHAIRPERSON CLEMENT: When would they take the  
4 additional money out? July 1st or --

5 MR. MC NEELY: We're trying to push to let them  
6 take it out in January. That way we get another 16  
7 million of funding, or maybe even split January, because  
8 they don't need it now. It's when you actually incur the  
9 costs, so we're thinking maybe January. That's the  
10 argument we're making is like, can you do maybe half in  
11 January and half in July or June 30th, 2009. That way we  
12 actually create the revenue. I can't see anything, if  
13 they actually do that. The issue may shoot for July 1st,  
14 2009, but I don't see that happening, 'cause we have a  
15 year to go before the SAF sunsets. I think the  
16 legislation is on top of that.

17 CHAIRPERSON CLEMENT: They would be pretty  
18 careful at that juncture.

19 MR. MC NEELY: Right.

20 CHAIRPERSON CLEMENT: Good. Any other questions  
21 or comments for Mr. McNeely?

22 MR. BUNCH: Mr. McNeely, I mentioned this last  
23 time. Is there any thought around trying to do rough  
24 costs to closure estimates for the remaining 1100 open  
25 LUST cases? You've got a better argument with the state

1 legislature in terms of, you know, the funds that are  
2 going to be required to meet obligations?

3           MR. MC NEELY: What we have done is we just came  
4 up with the average cost to closure, the 1100 sites, and  
5 we came up with -- it would be about like about  
6 \$125 million just to clean up these 1100 sites. So we  
7 need 125 million plus the costs to run the program, plus  
8 the costs, \$60 million to put into the hazardous --  
9 regulated substance funds. If you add all that up, it  
10 shows up we need the money and they're aware of that.

11           MR. BUNCH: Well, it sounds like you don't have  
12 enough in that scenario. If you do the rough math, it  
13 looks like there is 30 now with May's contribution. 12 is  
14 going to go away, and then 30 for next calendar year.  
15 That leaves 45 million or so, 48 million, maybe, and  
16 you've got 120 plus.

17           MR. MC NEELY: Well, there is different ways to  
18 look it now. The history of our programs, the most we've  
19 ever spent out in one year is 20 million of reimbursement  
20 claims. So if we match our history, in the next two years  
21 we will spend \$40 million out, and then -- then it's up to  
22 the owner/operator to pay whatever is left to get those  
23 sites closed.

24           But I think a lot of these sites are very close  
25 to closure. We haven't done an analysis, though. You

1 just take an average. If it's open, you say, okay, the  
2 averages to close the site is this much, and we have to  
3 multiply, but most of them have already spent most of the  
4 money because they're already done remediation, so it's  
5 real -- you'd have to go site by site and try to figure  
6 out, and it would be very difficult to do.

7               So usually what I do is like saying, this is our  
8 total liability. We spent this much money. We have  
9 500,00 aside, you have a hundred and some million in  
10 potential liability, but reality is, there is not enough  
11 drillers, there's not enough consultants in this state to  
12 spend 125 million between now and two years. I'm sure  
13 they will try, but it's tough.

14               MR. BUNCH: They will do their best, I'm sure.

15               MR. MC NEELY: We have pretty good effort  
16 forward.

17               CHAIRPERSON CLEMENT: Does the legislation allow,  
18 if there are outstanding claims, to process them even  
19 though they've applied at a certain point in time.

20               MR. MC NEELY: June 30th, 2010 is the deadline to  
21 apply, then SAF keeps going until you pay off all the  
22 claims. Now, I think the legislature, when they wrote it,  
23 it said July 1st, 2011 is when the money gets transferred  
24 back into the Regulatory Substance Fund. I think they're  
25 assuming one year all the claims will be paid off, which



1 is, I think right now it's still accurate. If they sweep  
2 everything, then that may not be accurate. They will push  
3 that back to 2013 or 2012, push the SAF back 2015, but  
4 there is no way they are going to not pay claims that are  
5 submitted.

6 MR. BUNCH: So if you went into that risk range  
7 scenario, your expectation would be that they push out the  
8 deadline for paying claims?

9 MR. MC NEELY: That's what we would push for.  
10 You know, the State did, not DEQ, but the legislation said  
11 that we are going to pay all these claims.

12 CHAIRPERSON CLEMENT: Once they paid their  
13 deadline about submission of the claims, I think we would  
14 have to, and the State would have to support payments, I  
15 believe, with an extended version.

16 MR. MC NEELY: And that's not to say we're just  
17 going to let people come in after June 30th, 2010. The  
18 current legislation meant to pay everything by June 30,  
19 2010, and I would consider that a liability. Every time  
20 they ask, we got to pay these claims, it's not like they  
21 don't know.

22 CHAIRPERSON CLEMENT: Good. Very good. Thank  
23 you.

24 The next one -- I don't have anybody next to  
25 this. I forgot to do that. Discussion and approval of

1 the SAF 2008 cost schedule. Let me take the lead on that

2 and then we will run back, pull it back to Phil.

3 We received two comments, formal comments on

4 this. Both came very quickly. One came through the

5 e-mail, and I distributed it to everybody, from Brian Beck

6 regarding petroleum costs and whether the new SAF schedule

7 -- if I find it, I'll read it -- is going to address that.

8 I will read it out loud, and I did send this by e-mail.

9 Mr. Beck isn't in the audience, so I just wanted

10 as a courtesy to put this out to the public.

11 "Ms Clement, we would like you to review the ADEQ

12 SAF 2008 cost schedules in the areas where equipment

13 vehicles are being used. ADEQ SAF has not taken into

14 account any changes in the fuel crisis. In fact, the last

15 ADEQ SAF made a real change to the cost per mile was when

16 a gallon was 1.91 per gallon and diesel was 2.32. The

17 Arizona WM," which I think is waste management, maybe.

18 MR. KERN: Weights and measures.

19 CHAIRPERSON CLEMENT: -- "is charging 62 cents

20 per mile for them to audit sites. If the State can charge

21 this much, why can't we get that for vehicle use. Also,

22 drilling has been charging a fuel surcharge to cover the

23 increase and ADEQ SAF will not cover this cost due to the

24 cost per foot. It's supposed to include all costs."

25 So, that's at issue.

1                   And then the second public comment that we got in  
2 writing was -- and Mr. Jones is here, and I don't want to  
3 speak for you. We were handed out this morning a packet  
4 from Mr. Jones, and we took the time before we started the  
5 meeting to review this packet so that everybody had this  
6 in preparation for the meeting and for the discussion on  
7 the SAF cost schedule.

8                   Okay. And then I'm going to go to a call to the  
9 public now because this is probably why most of you are in  
10 the room, and rather than wait until later and get your  
11 comments, if anybody has any additional comments or if Mr.  
12 Jones would like to speak to this directly, besides what  
13 he has provided in writing, this would be an opportunity  
14 for the public to comment.

15                  MR. JONES: My name is Greg Jones. The letter I  
16 gave you is from the follow-up comment, what kind of my  
17 eight-year follow-up from kind of being upset about the  
18 creation of the cost ceilings back in 2000. Some of the  
19 comments that were provided indicated that ADEQ admitted  
20 that the creation of them, of the ceilings was done with a  
21 flawed method, and so they admitted that it was flawed in  
22 the beginning and never have reevaluated those flawed  
23 costs for really eight years.

24                  The Director, when the new Governor came along  
25 and Director Owens took over, he said he was going to

1 implement all these -- or look at these cost ceilings in a  
2 hard way, if you look at the documents, he really hasn't  
3 followed through on any of that. It hasn't been done. I  
4 know you guys will say hey, it's only two years left in  
5 the program, why make the effort to change the cost  
6 ceilings.

7           Well, two years in, say, 20, 30, 40 percent on  
8 the costs to me is substantial. But I've learned in the  
9 past that just rambling on doesn't get people many places,  
10 so that's kind of why I prepared the written stuff for you  
11 guys to consider.

12           In my five or six years in the Policy Commission  
13 prior to everybody here, except maybe Mike O'Hara, Al  
14 Johnson, Joe, Ron Kern, Mr. Kelly, Rick Morgan, those  
15 people in the room right now were probably here. I didn't  
16 make a good case in the beginning. I'm a drilling  
17 contractor. But I was never asked in the first place what  
18 the costs should ever be. You know, they sourced to  
19 consultants for the costs, exclusively, and it never has  
20 changed, and nobody has come back to really find out what  
21 the true costs of doing these corrective actions are. So  
22 that's really what I have to say here, and you guys can  
23 take it as you will, but thanks for your time.

24           CHAIRPERSON CLEMENT: Mr. Jones, thank you very  
25 much for your comments. I know this has been an issue for

1 you for a long time. I personally appreciate the comments  
2 that you provided several years ago, and I know that they  
3 meant a lot to the agency and to those of us who were  
4 pulled in to participate in round tables and improvements  
5 to the program, so I know that they did have an impact,  
6 and I know they personally had an impact on my  
7 participation in the program, which is one of the main  
8 reasons I got involved, so I just want to make that  
9 comment. I know you did that and are doing this because  
10 you believe in protecting the public and the tax dollars  
11 in the State. It's not a personal value added component,  
12 I'm sure, so thank you for your comments.

13 MR. JONES: Thank you.

14 CHAIRPERSON CLEMENT: Any other public comments  
15 at this point in time? Mr. Kelly.

16 MR. KELLY: Dan Kelly. I just wanted to  
17 reiterate on fuel charge IRS approved yesterday, so we do  
18 need to find some way to take it up to the real and  
19 significant cost of fuel.

20 CHAIRPERSON CLEMENT: Thank you. Any other  
21 public comments at this point?

22 Let's open this up for discussion with the  
23 Commission, then, and perhaps look to Phil for some  
24 response regarding -- maybe the easier item is the fuel  
25 charges and how the agency -- what the agency is capable

1 of addressing and how it's being addressed at the current  
2 cost schedule.

3           MR. MC NEELY: Okay. Last year when the State  
4 increased their mileage charge, we increased the SAF cost  
5 schedule for that, increased it immediately, and this year  
6 we just checked again and the State has not increased  
7 their 41.5 percent. I think we pay 42 percent. So if  
8 they increase it, then we'll increase the cost schedule,  
9 but the IRS went to 58 cents. If the State follows, then  
10 we will track with the State. So, what we pay our people  
11 to travel, if I travel, I get paid 41.5 cents a mile on my  
12 car. So the comments about weights and measures, I don't  
13 know anything about that, but that's not the State rate.  
14 The State rate is 41.5 cents a mile.

15           And in terms of the gas costs for drilling, it's  
16 almost the opposite of what Mr. Jones is saying. We are  
17 following our rules and our statutes. We increased it  
18 based on the inflation rate of 1.8 or 9 percent, and  
19 that's what we've done every year. We're not going to  
20 start increasing because there is a spike of gas up and  
21 down, start increasing all the drilling costs, especially  
22 if they are inflated, which Mr. Jones says they are, I  
23 don't really know if they are anymore, it seems like in  
24 the past, I think some of these costs may have been  
25 inflated because you had to hold the cost for three years,

1 four years. Now we're paying very quickly, so it seems

2 like it's a fair cost to me.

3 CHAIRPERSON CLEMENT: Any questions or comments?

4 Mr. Bunch?

5 MR. BUNCH: I've got a comment, and I want to

6 thank Mr. Jones as well. I think, you know, we're all

7 better served to have members of the public that are

8 concerned about the use of public funds, and I'm going to

9 admit first off that I wasn't aware of your actions and

10 the discussion that had happened eight years ago, or

11 prior, but I have heard antidotally issues around cost

12 ceilings, and I also admit I have not participated in any

13 of the Technical Subcommittees where these issue were

14 discussed in detail. But my observations have been that

15 they're probably some areas that weren't reviewed.

16 It's a shamed that this is towards the tail end

17 of the process, but, you know, I personally would like to

18 review what Mr. Jones has submitted, and I think it's a

19 worthy issue for us to debate. I'm not sure what can be

20 done at this point, but I think when something like this

21 is brought to your attention, this is why we're here in my

22 opinion. And I would like to review this and perhaps

23 bring this up during the next UST Policy Commission

24 meeting once we are in a better position to evaluate it.

25 CHAIRPERSON CLEMENT: Does that mean, Mr. Bunch,

1 that you would like to hold off on approval and  
2 confirmation of the current proposed cost schedule? We do  
3 have a July 1st statutory deadline. Unfortunately, we  
4 didn't get comments. We thought this was going to be a  
5 very clean and easy process because we had not received  
6 any public comments until most recently, so we were not as  
7 a Commission aware that there was any controversy. But we  
8 do have that rub, and I don't know best how to --  
9 personally, I don't know what the suggestion is from you  
10 regarding that.

11 MR. BUNCH: So -- and forgive me. So there is  
12 the deadline of July 1?

13 CHAIRPERSON CLEMENT: Yeah. And we debated in  
14 the last meeting in April whether we needed a May meeting  
15 in anticipation of that deadline, but because we didn't  
16 think there was going to be any, based on what we had  
17 heard so far, any controversy with the cost schedules we  
18 didn't have that meeting, so we don't have a lot of buffer  
19 time, basically.

20 MR. MC NEELY: Can I interject and talk about Mr.  
21 Jones's comment?

22 CHAIRPERSON CLEMENT: Please.

23 MR. MC NEELY: You are not being completely fair.  
24 We did look at the cost schedules. We did change quite a  
25 bit. We took out things that were really out of line.



1 The day, the day rates, the half day rates for  
2 consultants. We felt like they were being used  
3 inappropriately. When we came up with that, we thought it  
4 would be a day, you'd go up and do it, but it turned out  
5 billing a day and a half day rate, plus an hourly rate.  
6 It was just getting hard to manage, so we took that out of  
7 the cost schedule.

8               Now it's T & M, so if you're out there working  
9 and we want to know and we want to prove that you're out  
10 there working. We took out the sampling for -- there was  
11 just a rate of \$500 per well, including equipment. When  
12 you really add it up, that was a lot of money. We took it  
13 out of T & M. So, we did that, and every time for  
14 reports, we changed in the rule and in the statute that we  
15 only pay for required reports that are approved. In the  
16 past we were getting all these chlorine reports and we  
17 always had to fight it out, you know. Then we have  
18 authority. Now we don't pay for reporting anymore, unless  
19 it's an annual report or we say it's required in the CAP  
20 or we request it.

21               So, we see the abuses and we made legislative  
22 changes and rule changes to address those issues and we  
23 thought that was the biggest issues for install, equipment  
24 install. Now we actually came up with a form, footage and  
25 pounds of dirt removal, and stuff like that, so everything

1 is T & M, it's very clear where the money is going.

2               In the past it was always old stuff. We felt  
3 like it was overcharged and we didn't know how to get a  
4 handle on it. We also said that you have to have proof  
5 that the costs were actually incurred. So we're looking  
6 at invoices very closely.

7               The FR, you brought up the FR issue. We are  
8 enforcing FR, and it's working, so, you know, if you go  
9 through and you highlight all of the auditor's  
10 recommendations, we've done all those and we feel pretty  
11 good about it, and I think the new forms, really, we know  
12 where the money is going.

13              Now, I think your issue is you want to lower the  
14 drilling rate per foot, cut it 40 percent. I've had a lot  
15 of other people tell me with the cost of health and  
16 safety, the cost of liability, the cost of -- now the cost  
17 of fuel, that these prices are now more in line than what  
18 they were when they first came out.

19              So, we felt like to do a survey and, Mr. Bunch,  
20 if you want to jump into this thing, it will take you two  
21 years to rewrite all this. It's a lot of time, and we  
22 don't have -- we have a hiring freeze on DEQ. Our staff,  
23 we dropped 18 people since I started. We are trying to  
24 get this program moving forward, and we made a  
25 conscientious decision that we've done everything we can

1 to control costs. We are implementing the law and the  
2 rules that has to go to process, and you could always  
3 argue if it's too little or too high, and you already have  
4 people in this room saying the cost ceilings are too low.  
5 You're saying they're too high. That's what you are going  
6 to get. It comes down to, we've got to implement a  
7 program. So, that's just my comments. I think we are  
8 doing everything we can. I feel like we have done a good  
9 job in controlling costs.

10 CHAIRPERSON CLEMENT: I do want to point out that  
11 in attachment D in the Auditor General's follow-up two  
12 years after the audit that they performed, and their  
13 quote:

14 "Our office has recently completed a 24-month  
15 follow-up of the Arizona Department of Environmental  
16 Quality - Waste Programs Division regarding the  
17 implementation status of the nine audit recommendations  
18 (including sub-parts of the recommendations) presented in  
19 the performance audit report released in August 2004  
20 (Auditor General Report No. 04-06). As the attached grid  
21 indicates: Eight have been implemented, and one is no  
22 longer applicable. Unless otherwise directed by the Joint  
23 Legislative Audit Committee, this report concludes our  
24 follow-up work on the Department's efforts to implement  
25 the recommendations resulting from the August 2004

1 performance audit. Sincerely, Debbie Davenport, Auditor  
2 General."

3               So, at least just for the record, State of  
4 Arizona's audit program was satisfied with the corrective  
5 actions the agency took regarding the program. I just  
6 wanted that on the record.

7               MR. JONES: Ms. Clement, may I make just one  
8 quick comment about that?

9               CHAIRPERSON CLEMENT: Sure.

10              MR. JONES: I'm Greg Jones again.

11              If you look at Item 2 on that follow-up, what I'm  
12 looking for is an explanation, how did the DEQ convince  
13 the Auditor General that they assess cleanup costs charged  
14 to the State Assurance Fund to see if cost ceilings are  
15 being treated as the actual price of cleanup costs rather  
16 than as an upper limit for costs?

17              Now, Phil, how did you implement that?

18              MR. MC NEELY: I don't remember off the top of my  
19 head. Some people come in with the top of the cost  
20 schedule and other consultants, some consultants are  
21 driven by their national contract with these big oil  
22 companies. Others that do these mom and pops usually  
23 charge the max amount.

24              MR. JONES: Shouldn't the state pay the lower  
25 numbers and not a high number? Isn't that the fiduciary

1 duty of DEQ is to look at the lowest number that gets the  
2 job done? Doesn't the State Lead do that?

3 MR. MC NEELY: State Lead's different because we  
4 get three bids. That was one of the things we looked at,  
5 having three bids for every single site and every single  
6 claim, which is not doable.

7 So we've evaluated that paper performance. It's  
8 not doable in our system, and it started back in the early  
9 '90s. You can't just switch it to a different type of  
10 process, so, I mean, I don't remember all the details  
11 exactly, but we have statutes that we're following, we  
12 have rules we're following, and to change on a dime takes  
13 legislative change, rule change. And you are sort of  
14 implying that we can just change things so quickly, and it  
15 takes stakeholder input and consensus.

16 So, to do this, to say you take the lower number  
17 isn't the thing to do, well, we think we are paying a fair  
18 number to get the sites cleaned up, and that's what the  
19 whole rule process is about. That's why we have owner  
20 certification, sign and actually tracking, and that's why  
21 they're paying their 10 percent. We've been enforcing  
22 that. We are doing everything we can, so I don't know  
23 what the lower number would be. We think --

24 MR. JONES: State Lead.

25 MR. MC NEELY: That's a different process.

1                   CHAIRPERSON CLEMENT: We can't have a debate. We  
2 can have public comment, and then, because we're in the  
3 process of reviewing these cost schedules and potentially  
4 voting on them today, we're going to have more of an  
5 interactive process, but we're not in a debate here. We  
6 don't do that. That's not our job.

7                   MR. VYES: Madam Chairman, with your permission,  
8 Mr. Jones, being in the public sector myself, I truly,  
9 truly appreciate what Mr. Bunch said, any comment, whether  
10 they're valued, whether they're perceptions or facts, we  
11 do appreciate that because that is what the public process  
12 is all about.

13                  Having been fortunate enough to be on both sides  
14 of the fence, public and private sector myself in my  
15 working life, and knowing the legislative process, auditor  
16 generals, the State's procurement policy foundation and  
17 the legislation, I must share that when an auditor general  
18 writes a report like that, while it is a longer process  
19 than it would be in a private sector, the board of  
20 directors that meets Saturday morning and change it  
21 starting July 1st or August 1st, in a public sector  
22 environment, in a state wide level with such a large  
23 volume and large input bodies involved, it is not as  
24 quickly, efficient as one would assume or want to be.

25                  When an auditor general says that eight out of

1 the nine findings have been satisfied, one was not  
2 applicable anymore, to me that statement means a lot in  
3 terms of improve internal controls, coming up with the  
4 most, relatively most practically available and feasible  
5 method to maximize the cost effectiveness that you are  
6 referring to without incurring additional costs, staffing,  
7 or statewide survey service, every contractor, when you  
8 refer to time and material with the cost ceilings, the  
9 procurement process already allows for those flexibilities  
10 and come up with the best possible and practical choice  
11 that the public -- I mean, the governing officials and  
12 legislature can make on behalf of the State of Arizona  
13 people, and that includes the businesses, that includes  
14 the taxpayers, and that includes the industrial interests  
15 at large.

16               So, when you merge these three elements in the  
17 triangle, I personally believe that a report like that  
18 says to me as a Joe Public, that somebody has done  
19 something, it may take a little bit longer, but actually  
20 has done something to improve the picture to the highest  
21 practical availability of resources, number one.

22               Second, regardless of whether we are the tail end  
23 of the SAF program or not, what is in place today has to  
24 be respected enough to meet the legislative deadline of  
25 July 1, so the program interruption is not an issue,

1 number one.

2           Because of the comment that you have shared, on  
3 the other hand, the e-mail comment from Mr. Beck, only  
4 suggestion I have is one, and that is practical  
5 suggestion, my personal opinion, knowing everything that  
6 we do know today, we must respect and meet the deadline of  
7 July 1, number one.

8           Second, Technical Subcommittee folks that we  
9 have, now that they have the benefit of this information,  
10 as a responsive nature that this Commission has towards  
11 the public and the industry, I will request that we just  
12 look at it. I would involve the staff members, such as  
13 Phil and his team members, they are the practical  
14 implementers of this whole deal. I would love for them to  
15 explore if there are any minor opportunities for further  
16 improvement without changing the whole apple cart per se,  
17 and if there is an opportunity through, such as what you  
18 mention about the IRS, for example, the State Department  
19 of Administration follows up, and the treasurer goes along  
20 with it, if federally mandated new mileage rate, our state  
21 adopts that, that gives them an opportunity to adjust  
22 internally past the July 1 deadline. So, sure, that is  
23 welcome, but it depends on other human beings elected by  
24 all of us at large.

25           If the practical opportunities for further



1 improvement for adjustment, I would love these two teams,  
2 the ADEQ team of the program division and the Technical  
3 Subcommittee, for the Commission, do that. If not, I  
4 believe that one can confidently say that everything  
5 that's practical and doable has been done, and it is not a  
6 perfect picture by no means, but it's the most practical,  
7 feasible and affordable picture within the framework that  
8 we are operating under.

9           And that's my viewpoint, and so suggestion would  
10 be, if something comes up, there is a window of  
11 opportunity, we will take advantage of your comments and  
12 even if something by Mr. Beck's comment. But in the  
13 absence of that opportunity, we must move forward to  
14 protect the interest of the program at large and to  
15 continue momentum that we have now towards those 1100  
16 cases that he mentioned so the program mission will be  
17 accomplished as we commented to the public at large.  
18 Thank you.

19           CHAIRPERSON CLEMENT: Thank you. Any other  
20 comments or --

21           Mr. Kelly, I'm sorry.

22           MR. KELLY: I just wanted to share with all of  
23 us, don't forget the reality that we can work under with  
24 respect to these cost ceilings. ADEQ is requesting a cost  
25 ceiling on July 1st, and that's been their standard

1 procedure because they have to review this annually, so  
2 that's the date they review it annually. But DEQ also  
3 amends these cost ceilings, Phil's talking about the  
4 State's mileage rates. You did that in the middle of the  
5 year last year, and you will do it again in the middle of  
6 the year this year.

7           They can revisit these at any moment, so we're  
8 not stuck by July 1st. We can do something August 1st,  
9 September 1st, you guys got all kinds of free time to deal  
10 with this, I know. So we're not stuck by this July 1st  
11 deadline. It's just a marker and we keep moving forward.

12           MR. MC NEELY: I agree.

13           CHAIRPERSON CLEMENT: Could you maybe clarify the  
14 July 1st deadline? I mean, we have -- you have an annual  
15 requirement to update the cost schedules. That timing is  
16 July 1st, so we have to do something to update the cost  
17 schedules by July 1st; is that correct?

18           MR. MC NEELY: It says we will review the cost  
19 schedules every year and increase. If you don't redo the  
20 whole thing -- I think every three years. If you don't do  
21 an increase it pays that's every year, we increase it to  
22 whatever the index says.

23           CHAIRPERSON CLEMENT: And that annual review  
24 doesn't preclude, and I agree with Mr. Kelly, it doesn't  
25 preclude you making changes any other time during the year

1 if it's required?

2 MR. MC NEELY: We have the authority to change  
3 it.

4 MR. BUNCH: The authority only moving the number  
5 north, or does the authority run both ways?

6 MR. MC NEELY: No. Whatever it takes, take them  
7 all out altogether. Do whatever you want, but I wouldn't  
8 recommend that.

9 CHAIRPERSON CLEMENT: We would be paying  
10 administratively if we did that, so that's the situation  
11 we're in.

12 Are there any other public comments or any other  
13 commission comments. Mr. Jones?

14 MR. JONES: Just a comment on Phil's statement  
15 about all I care about is reducing the drilling costs by  
16 40 percent. It's not that at all. That 40 percent comes  
17 from the State Lead people saying that's how they do work,  
18 the same work that SAF does for 60 percent of the cost, so  
19 that's where that 40 percent comes from.

20 I could probably do it on various sites anywhere  
21 from 10 to 40 percent cheaper, and then other sites I may  
22 be 10 to 20 percent over, say deeper holes, et cetera.

23 All I was trying to get at is that you need to truly  
24 evaluate it for the true costs, not base it all on this  
25 flawed method.

1                   And, Phil, you know you could reduce the cost  
2 across the board 10 percent prior to July 1st and can  
3 justify it, because you have reams of invoices from the  
4 clients, our consultants, drillers and labs that show  
5 lower numbers for, say, State Lead work, even though you  
6 say that's a whole different program. Well, the costs for  
7 the corrective action tasks shouldn't be significantly  
8 different. You know, letting out a contract may be.

9                   CHAIRPERSON CLEMENT: Okay. I think we got the  
10 gist of that. Just a quick comment in terms of the  
11 competitive nature of being in consulting versus this  
12 State Lead, and I work in a lot of different areas, and  
13 the pricing schedules that are not -- keep going to the  
14 SAF. The pricing schedules that contractors, consultants  
15 have vary all over the board, and so cost ceilings were  
16 meant to be ceilings. Unfortunately, as the program  
17 evolved, they became a pricing schedule for some  
18 contractors. These were meant to be -- this is the most  
19 you can charge, you should be charging what it costs you,  
20 but this is the most you can charge. Those are my points  
21 of view. I mean, costs are all over the board in  
22 consulting, and if you are a good negotiator, you can  
23 bring them down, but these numbers are not so out of line  
24 in terms of my experience, so...

25                   Any other? Mr. Findley?

1                   MR. FINDLEY: Could we clarify, then, what we are  
2 proposing for the July 1st deadline. Is the old cost  
3 schedule with an incremental increase with cost of living  
4 or cost of doing business?

5                   MR. MC NEELY: Right. The current cost schedule  
6 plus the -- I don't remember the percent. I think it was  
7 1.9 percent across the board.

8                   MR. FINDLEY: 1.9.

9                   CHAIRPERSON CLEMENT: And that was based on a  
10 statistic from the Department of Labor. It was all in the  
11 packet and it's on the website for DEQ, and that's the  
12 only change to the current cost schedule that is being  
13 proposed for July 1st, so that's where we are. And I'm  
14 open to any motions or any suggestions about how we  
15 approve or not approve the cost schedule.

16                  I think we had almost a motion.

17                  MR. VYES: Madam Chairman, I would move that we  
18 approve the SAF 2008 cost schedule without any conditions  
19 but with the mere suggestion that, should a window of  
20 opportunity arise, and the staffing and the timing and the  
21 data permits, and the ruling process permits, that Phil  
22 and the ADEQ look into those opportunities to adjust  
23 further.

24                  But as it stands right now, my motion is that we  
25 approve this and allow the department the opportunity to

1 progress forward with the mission of this program.

2 CHAIRPERSON CLEMENT: Thank you. We have a  
3 motion. Is there a second?

4 MR. GAYLORD: Second.

5 CHAIRPERSON CLEMENT: Karen Gaylord is seconding  
6 the motion.

7 Is there any discussion or further amendments to  
8 the motion?

9 MR. BUNCH: I just wanted to, I guess, amend and  
10 say that for the purposes of forwarding the program, that  
11 I understand we have a political need to get these cost  
12 ceilings established, and I'm going to echo Manoj's  
13 comments about looking for opportunities within the  
14 framework of the rules that you've got established for  
15 department policies, that we do at least take a look at  
16 it, maybe you've got a flexibility to adjust.

17 MR. MC NEELY: Okay.

18 CHAIRPERSON CLEMENT: So, the amendment is that  
19 we vote to approve the 1.9 percent cost schedule increase  
20 for 2008, but that we also take time out to look at the  
21 cost schedule and see if there is any additional items  
22 that can be approved and that can basically be relative to  
23 petroleum costs or it could be relative to decreasing  
24 certain costs relative to whatever factors there are.

25 And then is there -- and --

1 MR. VYES: I was going to say, within the  
2 limitations of the staff and the other program and the  
3 task obligations that the department and the program has,  
4 but that has to be practical.

5 MR. BUNCH: Absolutely.

6 CHAIRPERSON CLEMENT: That's kind of a long  
7 motion. Let's do a restate on that.

8 MR. VYES: Thank you for the clarification.

9 Simple motion for the record is this: I move  
10 that we approve the SAF 2008 cost schedule as proposed by  
11 the staff, leave a window open for adjustment  
12 opportunities that staff may have subject to the  
13 limitations of the staffing and other obligations.

14 CHAIRPERSON CLEMENT: That's good. I mean,  
15 sounds like it's what we talked about.

16 Okay. Is there a second to the motion?

17 CHAIRPERSON CLEMENT: Oh, Karen had a second.  
18 Excuse me. Ms. Gaylord had a second.

19 All in favor?

20 (Chorus of ayes.)

21 CHAIRPERSON CLEMENT: Anyone opposed? Okay.  
22 Could we task -- who would like to take on the  
23 responsibility of spearheading this effort? It's a joint  
24 technical/financial evaluation type of task, so it could  
25 be either committee. We already have elements that both

1 subcommittees are doing, so who would like to try to move  
2 this forward from this point?

3 MR. BUNCH: My personal recommendation would be,  
4 I think the Technical Subcommittee has dealt with these  
5 issues repeatedly, and any expertise probably lies within  
6 the folks that typically attend those meetings. So,  
7 that's just my personal recommendation. We weren't  
8 overwhelmed with the last Evaluation Subcommittee  
9 participation.

10 CHAIRPERSON CLEMENT: So what we could do on the  
11 next -- my proposal would be on the next Technical  
12 Subcommittee meeting, we add an agenda item to identify  
13 those areas that people would suggest be evaluated, you  
14 know, rather than just look at everything. I mean, if  
15 people have real concerns, either from Mr. Jones's  
16 perspective or Mr. Beck's perspective or Mr. Kelly's  
17 perspective, identify those specifically for us and we  
18 will look to the Technical Subcommittee for that, because  
19 that's the only way we are going to learn anything. Good.

20 Okay. Onward. Now we are on the Evaluation  
21 Subcommittee update with Mr. Bill Bunch.

22 MR. BUNCH: I think we set a new record in some  
23 respects -- in respect to the participation in the  
24 Evaluation Subcommittee meeting. I was a little concerned  
25 at first, but Mr. Kern put me at ease that we weren't



1 going to exceed the Fire Department occupancy levels with  
2 Mr. Kern, myself and the one member of the public that  
3 attended.

4 But we did go through House Bill 2425 with  
5 respect to the stop use orders and stop use tags. And I  
6 think we had a fairly productive discussion. We went  
7 through the different components of the legislation and  
8 kind of discussed different aspects of implementation.

9 We did bubble up an issue that Mr. Kern's had an  
10 opportunity to address and that is how do you deal with a  
11 site that's been issued a stop tag notice but would  
12 require fuel in order to demonstrate compliance with  
13 whatever alleged noncompliance issue was there.

14 Ron's done some research to indicate that that  
15 should be a very rare condition or there are some  
16 techniques that can be used, but we will have to confirm  
17 that.

18 We did hear that there is no contemplation around  
19 rule development to implement the stop use notice  
20 component, although we did talk about maybe having some  
21 sort of policy published for the public, and I think the  
22 strategy -- and correct me if I'm wrong -- would be that  
23 the compliance and enforcement policy that the department  
24 has today might be amended to reflect how they are going  
25 to deal with the stop use notices, and we talked about

1 whether or not it would be a permanent boot type tag  
2 that's used in other parts of the country or something  
3 that's maybe more cost effective that the operator could  
4 remove on their own.

5 I believe the agency's moving towards the latter,  
6 and so those are some of the issues that we can at some  
7 point, you know, develop an official recommendation of the  
8 agency. We will probably recommend one more meeting here,  
9 maybe later in the fall, just to have a final  
10 recommendation to put before this committee.

11 CHAIRPERSON CLEMENT: Perfect. Any questions for  
12 Mr. Bunch or comments? Thank you very much.

13 MR. BUNCH: You're welcome.

14 CHAIRPERSON CLEMENT: Then we will move on to the  
15 update on the Technical Subcommittee.

16 MS. KALAGHAN: We have not had a Technical  
17 Subcommittee since the last Policy Commission meeting, so  
18 there is no update.

19 CHAIRPERSON CLEMENT: You will be next, then.  
20 General call to the public. I know we had that  
21 previously where we were talking about the SAF schedule.

22 Are there any other general comments from the  
23 public?

24 Okay. Summary of meeting action items. We are  
25 going to have a Technical Subcommittee meeting the third

1 Thursday, the 24th at 10 a.m. at ADEQ, July 24th. We do  
2 not have scheduled an Evaluation Subcommittee yet, but we  
3 will be in the fall it looks like.

4 MR. BUNCH: That timing seems to make more sense  
5 to me.

6 CHAIRPERSON CLEMENT: We're going to have the  
7 Technical Subcommittee look at both the cost schedule  
8 issue that we discussed in some detail today, and then  
9 also the MNA program implementation. I think it will be a  
10 very interesting meeting, and those are the only items I  
11 tagged as far as what we were going to do.

12 Okay. And then the next thing is agenda items  
13 and schedule for the next Commission meeting. Our next  
14 meeting is scheduled for July 23rd, which would be before  
15 the July 21st subcommittee meeting, which doesn't make any  
16 sense at all. So, do we want to have a July meeting? Do  
17 you think we need a July meeting for any agenda items, or  
18 can we just at this point make a decision that our next  
19 meeting is August?

20 MR. BUNCH: I believe August.

21 MR. VYES: That way it gives them an opportunity,  
22 the subcommittee members to come back with something to  
23 share with the Commission.

24 CHAIRPERSON CLEMENT: So our next meeting will be  
25 August, and I believe the date on that is August 27th,

1 2008, and it will start at 9 a.m. in this room.

2       Okay. I believe that's it. Are there any other

3 comments? I very much appreciate everybody's

4 participation. We will adjourn the June 25th, 2008 UST

5 Policy Commission meeting. Thank you everybody.

6       (10:26 A.M.)

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C E R T I F I C A T E

I HEREBY CERTIFY that the proceedings had  
upon the foregoing hearing are contained in the shorthand  
record made by me thereof and that the foregoing 60 pages  
constitute a full true and correct transcript of said  
shorthand record all done to the best of my skill and  
ability.

DATED at Phoenix, Arizona, this 25th day of  
June, 2008.

\_\_\_\_\_  
Deborah J. Worsley Girard  
Certified Reporter  
Certificate No. 50477